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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,022	11/26/2003	Lisa M. Rickards	123210020002	8857

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EXAMINER

HOOK, JAMES F

ART UNIT	PAPER NUMBER
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3754

DATE MAILED: 01/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/723,022	Applicant(s) RICKARDS, LISA M.	
	Examiner James F. Hook	Art Unit 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 12-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 12-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 2 contains the trademark/trade name VELCRO. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe hook and loop fasteners and, accordingly, the identification/description is indefinite.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 4-7, 12, 13, 15, 17, 18, 23-26, 28, 29, 31, and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Semak. The patent to Semak discloses the recited covering for a hose, where the use of such to cover a suction hose is considered to be merely intended use where the cover of Semak is capable of being used around any hose including a suction hose, comprising a sleeve¹² positioned around a hose extending at least along a portion of the length of the hose, at least one restraint 24 in the form of an elastic band can be provided at both ends of the sleeve for removably coupling the sleeve to the hose, the material used for the sleeve is washable (col. 4, lines 26-29), the material of the sleeve is nylon (col. 4, lines 16-19), as seen in figure 2, a plurality of pockets are provided 18 along the length of the sleeve, the pockets are formed by stitching and are so formed to receive an element 20, where such is also used to suspend the sleeve and therefore are considered to be handles and capable of being means to carry the sleeve, where ones hand would fit between the sleeve and the element 20 as seen in figure 2 in open sections 56, there are at least two handles which are spaced from the ends and are sewn to the sleeve where the pockets formed to hold element 20 are sewn to the sleeve and such connects the element 20 which is capable of use as a handle to the sleeve, the sleeve is wider than the hose to contain it therein, where other elements 18 form pockets to store element 20 and are likewise sewn to the sleeve, the sleeve has a length to

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extend between first and second ends of the hose, indicia such as advertising can be provided on the sleeve (col. 4, lines 30-33), the sleeve is a single sheet with a sewn single seam, the cover is provided on a hose attached to a vehicle and provided with indicia thereby meeting claim 26, where inherently one would utilize the handle portions of the sleeve to move the hose around and into the designated area as suggested by the description of use of the article in Semak, and where the sleeve inherently protects the tube within by preventing direct exposure to outside elements.

Claims 1, 2, 4-6, 12, 15, 24, 28, 29, and 33 are rejected under 35 U.S.C. 102(e) as being anticipated by Hestetune. The patent to Hestetune discloses the recited covering for a hose where the use of such to cover a suction hose is considered merely intended use where the cover is capable of covering any hose including a suction hose comprising a sleeve 10 positioned around a hose extending at least along a portion of the length of the hose, a pair of ties 30,32 are provided at both ends of the sleeve for removably coupling the sleeve to the hose where hook and loop fasteners can be used also as well as other fasteners (col. 2, lines 20-29), the material used for the sleeve is considered to be washable in that any material can be washed, the sleeve is wider than the hose to contain it therein, the sleeve has a length to extend between first and second ends of the hose, the tie restraint is in the form of a loop which is capable of being used as a handle which provides a gap in the loop to allow a users hand to enter the gap and grip the handle, where the sleeve

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inherently protects the tube within by preventing direct exposure to outside elements.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 14, 16, 20-22, 27, 30, and 32 are rejected under 35 U.S.C.

103(a) as being unpatentable over Semak. The patent to Semak discloses all of the recited structure with the exception of forming the handles as straps which can be partially positioned around the sleeve, providing an instrument in the pocket, forming the sleeve of a length longer than the hose, disclosing how the indicia is placed on the sleeve and what type of substance is use to form the indicia, including reflective substances. It would have been obvious to one skilled in the art to modify the element 20 in Semak to be in the form of a strap rather than a wire as such is merely choice of mechanical design as to what shape the element takes, either a rounded wire or a flatter shape which would be strap like. The forming of the handles as separate straps are an obvious choice of mechanical expedients where one skilled in the art would recognize that the handle portions could be formed of a separate band that wrapped around the sleeve to be stronger than a handle made from the same material as the sleeve which would only be as strong as the material of the sleeve and the stitching

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used to form it, where such is merely a choice of mechanical expedients and an old and well known way of providing a handle to a sleeve that is intended to carry weight, and where such could replace the need for an elongated member to hang the sleeve and hose from. Providing the pocket with an instrument is considered merely intended use where any object could be provided in the pocket, including an instrument as such is merely a choice of mechanical expedients to provide any object in the pocket including some type of instrument, where the cable of Semak could be seen to be an instrument for aiding in the support of the sleeve as such is merely a choice of mechanical expedients. It is believed that depending upon the extension of the hose, that Semak suggests that the sleeve could be longer than the tube when the tube is collapsed therein, however such is also merely a choice of mechanical expedients to change the length of the sleeve as such would only require routine experimentation and skill to arrive at optimum usable lengths. Semak is silent as to what the indicia is made from and how it is provided on the sleeve, however it is considered old and well known that indicia provided to advertise are known in the art to be painted on and that such could be formed of a reflective paint that would also provide reflective properties to the sleeve especially when such is to be used for an application that would require it's use at night and around vehicles, where such is old and well known to provide extra protection for the user and prevent damage to the hose when it is more easily seen with reflective type of markings. It would have been obvious to one skilled in the art to use any means to place the indicia on the sleeve including the use of reflective paint as is old and well known in the art to allow the

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indicia to be more easily seen and painting is a known method of providing indicia on a sleeve.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Semak in view of Gray, Jr. The patent to Semak discloses all of the recited structure with the exception of providing the indicia as a patch. The patent to Gray, Jr. discloses that it is old and well known to provide pipes and such with indicia that is in the form of a patch to identify the pipe. It would have been obvious to one skilled in the art to modify the indicia in Semak to be a patch, as such is a known method of providing indicia to the pipe sections that need to be identified but normally would not easily accept indicia as suggested by Gray, Jr. where it is known that such labels are sometime printed directly to the item or provided as a separate label where the use of a separate label would allow for easier application of the indicia without requiring added painting steps.

Response to Arguments

Applicant's arguments filed October 25, 2004 have been fully considered but they are not persuasive. It is noted that no arguments were provided that were directed toward the claims rejected under 35 USC 103(a), and such is therefore taken as a concession. Therefore, these rejections are deemed proper. With respect to the argument directed to Semak as applied under 35 USC 102(b), the element 20 in combination with the end pockets 18 of Semak are considered the equivalent of a handle, and therefore a means to carry the sleeve by, and such is formed in such a way that ones hand can fit between the sleeve

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and element 20 in gaps 56 to grasp element 20 and have ones hand in the gap 56. Due to the fact that the pockets 18 are sewn to the sleeve and are what connect the element 20 to the sleeve such provides a sewn handle. The fact that the element 20 is used to suspend the hose and sleeve is further proof such is the equivalent of a handle, and the use of the hand to suspend the hose is nothing more than intended use for such a handle. Also it is inherent that the user of Semak would have to hang the tube onto the hooks and would inherently have to use the element 20 to do so otherwise there would be no logical way to insure the element 20 made it over the hook. The arguments directed toward Beane and Galigan are moot in that these references are no longer being applied at this time.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Strasser, Ryan, Leech, and Cote disclosing state of the art sleeves.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is

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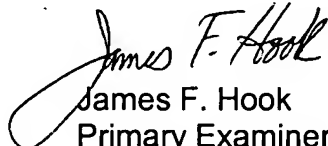
filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James F. Hook whose telephone number is (571) 272-4903. The examiner can normally be reached on Monday to Wednesday, work at home Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on (571) 272-4906. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


James F. Hook
Primary Examiner
Art Unit 3754

JFH